

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STARLIN NUNEZ,

Movant,

-against-

JOSEPH SPANO,

Respondent.

21-CV-9557 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Movant Starlin Nunez pleaded guilty before the Honorable Valerie E. Caproni of this court to racketeering conspiracy, in violation of 18 U.S.C. § 1962. The court sentenced him to a term of imprisonment of 108 months, followed by a three-year term of supervised release. *See United States v. Nunez*, ECF 1:17-CR-0438-1, 517 (S.D.N.Y. Mar. 25, 2019). Movant did not file a direct appeal.

On November 17, 2021, Movant filed this action *pro se*, using form AO 242, Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241, and on November 18, 2021, the Clerk of Court opened the submission as a new civil action under this docket number.¹

Although Movant used the court's Section 2241 form petition, Movant's filing makes clear that he seeks to challenge the validity of his conviction or sentence. Such a challenge must be brought in a motion under 28 U.S.C. § 2255.

The Clerk of Court is therefore directed to administratively close this action (No. 21-CV-9557), and to file the petition as a motion under 28 U.S.C. § 2255 in a new civil action. The

¹ On November 19, 2021, due to a clerical error, the Clerk of Court opened the same submission as a second new civil action under docket number 21-CV-9606. By order dated November 19, 2021, the Court directed the Clerk of Court to administratively close that action as duplicative of the case pending under this docket number.

Court further directs the Clerk of Court to assign the new action to Judge Valerie E. Caproni and to designate it as related to Movant's criminal case before Judge Caproni, No. 17-CR-0438-1 (VEC).

CONCLUSION

The Clerk of Court is directed to administratively close this action (No. 21-CV-9557), and to file the petition as a motion under 28 U.S.C. § 2255 in a new civil action.

The Court further directs the Clerk of Court to assign the new action to Judge Valerie E. Caproni and to designate it as related to Movant's criminal case before Judge Caproni, No. 17-CR-0438-1 (VEC).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444–45 (1962) (holding that appellant demonstrates good faith when seeking review of a nonfrivolous issue).

The Clerk of Court also is directed to mail a copy of this order to Movant and note service on the docket.

SO ORDERED.

Dated: November 23, 2021
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge